

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

AUG 24 2007

U.S. DISTRICT COURT
ELKINS WV 26241

BRANDON LEE BEVERLY,

Plaintiff,

v.

2:05 CV 77
(Maxwell)

DEBBIE COTTRELL, *et al.*,

Defendant.

ORDER

It will be recalled that on September 30, 2005, *pro se* Plaintiff Brandon Lee Beverly, who was, at that time, an inmate at the Huttonsville Correctional Center in Huttonsville, West Virginia, filed a Complaint under 42 U.S.C. § 1983 seeking \$1,000,000.00 in damages from the Defendants. Although initially filed in the United States District Court for the Southern District of West Virginia, the above-styled civil rights action was transferred to this Court on October 6, 2005, pursuant to 28 U.S.C. § 1391(b).

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.01 of the Local Rules of Prisoner Litigation Procedure and 28 U.S.C. § 1915(e).

On October 2, 2006, United States Magistrate Judge John S. Kaull issued a Report And Recommendation wherein he recommended that a letter filed by the Plaintiff on September 25, 2006, and requesting that his case be "canceled" be construed as a Motion To Dismiss and granted.

In his Report And Recommendation, Magistrate Judge Kaull provided Mr. Beverly with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised Mr. Beverly that a failure to timely file objections would

result in the waiver of his right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Kaull's October 2, 2006, Report And Recommendation have been filed by Mr. Beverly and that this matter is now ripe for review.

Upon consideration of Magistrate Judge Kaull's October 2, 2006, Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge John S. Kaull on October 2, 2006, be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's Motion To Dismiss (Docket No. 23) be, and the same is hereby **GRANTED**. It is further

ORDERED that the Clerk of Court shall close the above-styled civil rights action and strike it from the docket of this Court.

ENTER: August 24th, 2007



United States District Judge

¹The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).